the negligence of the defendant. The latter demurred. *Held,* that the demurrer should be sustained on the ground that the city in holding the celebration was performing a governmental function and hence was not liable for a negligent performance, as the act was not in itself intrinsically dangerous. *Pope* v. *City of New Haven* (Conn. 1916), 99 Atl. 51.

That a city is not liable for the negligent performance of governmental duties in general is well settled, 2 DILLON, MUN. CORP. (4th Ed.), §949. See 15 MICH. L. REV. 180, 30 HARV. L. REV. 270. But the fact that the duties are governmental will not excuse the city if the act is in itself intrinsically dangerous. *Colwell* v. *Waterbury,* 74 Conn. 568, 51 Atl. 530; *Speir* v. *Brooklyn,* 139 N. Y. 6, 34 N. E. 727. It has been held that where a municipality has the power to give such a celebration as that in the instant case, if it is exclusively for the gratuitous amusement of the public the municipality is not liable. The act in which it is engaged is solely for the general benefit and interest of the public. *Tindley* v. *City of Salem,* 137 Mass. 171, 50 Am. Rep. 289; *Kerr* v. *City of Brookline,* 208 Mass. 190, 94 N. E. 257. In some cases the city has been held not liable on the ground that the entertainment was an ultra vires act. *Morrison* v. *City of Lawrence,* 98 Mass. 219; *Smith* v. *City of Rochester,* 76 N. Y. 506. But when a city maintains or authorizes acts which constitute a nuisance it is liable for the damage caused, *Mootry* v. *City of Danbury,* 45 Conn. 550, 29 Am. Rep. 703; *Pennoyer* v. *Saginaw,* 8 Mich. 534; *Harper* v. *Milwaukee,* 30 Wis. 365; *Vanderslice* v. *City of Philadelphia,* 103 Pa. St. 102, and at least in some jurisdictions it cannot escape liability on the ground that it was performing a governmental function. *Sammons* v. *City of Gloversville,* 175 N. Y. 346, 67 N. E. 622; *Hart* v. *Union County,* 57 N. J. L. 90, 29 Atl. 490. Accordingly it has been held where a city permits a public exhibition of fireworks in the city street the jury may find it to be a nuisance, and in such case the city will be liable for the damages resulting on the ground that it consented to the creation of the nuisance. *Landau* v. *City of New York,* 180 N. Y. 48, 72 N. E. 631; *Speir* v. *City of Brooklyn,* 139 N. Y. 6, 34 N. E. 727; *Moore* v. *City of Bloomington,* 51 Ind. App. 145, 95 N. E. 374. Contra, on the ground that the case involves no element of the alleged wrong except negligence, and the condition is not sufficiently permanent to constitute a nuisance. *Kerr* v. *City of Brookline,* supra. Where a city merely fails to prevent fireworks on a crowded street the city is not liable for personal injury resulting. *Ball* v. *City of Woodbine,* 61 Iowa 83. *City of Madisonville* v. *Bishop,* 113 Ky. 106, 68 S. W. 269, which has been cited to the contrary, is based upon a statute. A display of fireworks in a public park is not a nuisance per se but it is a question for the jury. *Landau* v. *City of New York,* supra; *De Agrammonte* v. *City of Mt. Vernon,* 112 App. Div. 291, 98 N. Y. Supp. 454.

NEGLIGENCE—OF FERRYMAN.—Plaintiff's intestate, who was a passenger on defendant's steam ferry boat, was killed by drowning when an automobile on the boat accidently started, ran forward and knocked decedent into the river. It appeared that no practical barrier was provided by the defendant to stop the progress of a car when once started. *Held,* the question of

defendant's negligence should be submitted to the jury. *Meisle* v. *New York Cent. & H. R. R. Co.* (N. Y. 1916), 114 N. E. 347.

This case is worthy of note, perhaps, principally on account of its peculiar facts, although in the Appellate Division the complaint was dismissed on the ground that there was no evidence to justify a finding that the defendant was negligent, or that it could have anticipated the accident. However, the decision of the Court of Appeals is clearly right. A ferryman, like other common carriers of passengers, is not an insurer of the passenger's safety, but is required to exercise the highest degree of care, skill, and foresight to protect him from injury. *Louisville etc. Ferry Co.* v. *Nolan,* 135 Ind. 60, 34 N. E. 710; *Wyckoff* v. *Queens Co. Ferry Co.,* 52 N. Y. 32, 34, 11 Am. Rep. 650. If the possibility of an accident was clear to the ordinarily prudent eye then it is not necessary that the defendant should have foreseen the particular method in which the accident occurred. *Munsey* v. *Webb,* 231 U. S. 150, 156, 34 Sup. Ct. 44, 45, 58 L. Ed. 162; *Washington & Georgetown R. R. Co.* v. *Hickey,* 166 U. S. 521, 526, 527. It is the duty of a public ferryman to provide suitable guards, barriers and fixtures of all kinds for the security of passengers. *White* v. *Winnisimmet Co.,* 7 Cush. 155; *Whitmore* v. *Bowman,* 4 G. Greene (Iowa) 148; *Sanders* v. *Young,* 38 Tenn. (1 Head) 219, 73 Am. Dec. 175; *Wyckoff* v. *Queens Co. Ferry Co.,* supra.

PLEADING—SPECIAL DEFENSE AS TO SUNDAY CONTRACT.—In an action against a decedent's estate on a note made on Sunday, the defendant pleaded that the note was illegal. After the court had directed a verdict in favor of the plaintiff, the defendant filed a motion in arrest of judgment on the ground that "it conclusively appears from the evidence that if said instrument was executed and delivered by decedent, it was delivered on Sunday, March 1, 1914." No objection was taken to the use of a motion in arrest for an error not apparent of record, but the motion was treated as a motion for a new trial and overruled on the merits. *Held,* that the defense to a note that it was a Sunday contract was a special defense, within CODE SUPP. 1913, § 3340, requiring such defenses to be pleaded, that it was not sufficiently pleaded by the conclusion that "the note is illegal," but the fact that it was made on Sunday must be alleged, and that such defense cannot be raised for the first time on a motion in arrest or for new trial. *Rule* v. *Carey,* (Iowa 1916), 159 N. W. 699.

The same court has gone to the extent of holding that a defendant who has not raised the issue in his answer may properly be denied leave to amend for that purpose pending the trial on the ground that "it is a clear case of a technical defense, provided by the statute in the interest of what is deemed public policy, and barren of justice between the parties," and so not in furtherance of justice as required by the statute relating to amendments. *Chlein* v. *Kabat,* 72 Iowa 291, 33 N. W. 771. Other courts, apparently without being so strict as to amendment, have followed the principal case in requiring a special plea. *Triphonoff* v. *Sweeney,* 65 Ore. 299, 130 Pac. 979; *Raymond* v. *Phipps,* 215 Mass. 559, 102 N. E. 905; *Herndon* v. *Henderson,* 41 Miss. 584; *Power* v. *Brooks,* 7 Ky. Law Rep. 204; *Finley*